# STRAITS SETTLEMENTS REPORTS.

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## R. v. LIM CHENG SOO.

[App. Crim. Juris. (McElwaine, C.J.) November 10, 1941]

*Penal Code S. 420 — Cheating — Cheating in the course of an illegal transaction — Whether a criminal prosecution will lie.*

The accused in this case was concerned in a contract with one Joi Cheong Seah whereby the latter agreed to purchase 1,000 forged $1/- notes for $388. The money was paid, and a bundle with a couple of genuine notes on top was received by Joi Cheong Seah. The rest of the bundle was found to be blank paper, and on these facts the accused was charged with cheating, an offence punishable under Section 420 of the Penal Code. The learned Magistrate who originally heard the case stopped the case at an early stage under Section 182 (g) of the Criminal Procedure Code holding that as the agreement was concerned with the purchase of forged notes, which was in fact an illegal transaction, it could not be enforced in any civil Court and could not therefore support a criminal prosecution for cheating.

Held, that a prosecution would lie for cheating in the course of a transaction to purchase forged notes, if a party to the transaction is found to have committed it.

*Cases referred to:—*

(1) *Taylor v. Bowers* 1 Q.B.D. 291.

(2) *Alexander v. Rayson* (1936) 1 K.B. 169.

(3) *Abdullah v. Emperor* A.I.R. 1914 Lahore 315.

(4) *R. v. Tan Ah Seng* 4 M.L.J. 314.

(5) *R. v. de Verteuil* and *Whelan* 2 Journal of Criminal Law 544.

APPEAL AGAINST ACQUITTAL.

*C. H. Butterfield* for the Crown.

Respondent in person.

The facts and arguments sufficiently appear from the Judgment.

an appeal by the Crown
Cheng Soo and three
g. Lim Cheng Soo
three were not served
not appear.

briefly that one Joi
concerned in a contract with the
whereby he was to purchase 1,000 forged $1
notes for $388/-. that he paid this money and received a bundle with a couple of genuine notes on top, the rest of the bundle being blank paper.

The learned Magistrate without deciding whether the Crown case was believable or not, and without calling on the accused, acquitted them all.

In his grounds of judgment the Magistrate said, "I did not however come to a final decision on the facts of this case as at quite an early stage I stopped the case under S. 182 (g) of the Criminal Procedure Code on a point of law. I took the view that the complainant's transaction, a purchase or an attempt to purchase forged notes, was in fact quite illegal. It was not an agreement which could be enforced in any Civil Court and it could not support a criminal prosecution for cheating."

There is no doubt that a Civil Court will not enforce a contract to break the law, nor will it help a person who has paid money under such a contract when complete to recover what he has paid.

I need not consider whether the illegal contract had been so far executed that the so called complainant had no *locus poenitentiae,* and I merely refer to *Taylor v. Bowers*[1] and *Alexander v. Rayson*[2].

This is not a proceeding to enforce an illegal contract or to recover money paid for an illegal consideration. It is as the record shows, a prosecution on behalf of the King.

Cheating may be a civil wrong, but it is also a crime against the State, and here the Crown seeks to have the accused punished for this crime if they are found to have committed it.

The learned Magistrate relied on a paragraph in the note to S. 415 in Gour (4th. Edition paragraph 4656 and in the 5th. Edition paragraph 5058) to the effect that no person should be allowed to prosecute in a Criminal Court for an act for which he will obtain no redress in a Civil Court. I have not access to the report on which this passage is based, and it appears to relate to a purely private prosecution. From the facts of the case as stated it looks like one in which the accused having received money for a certain purpose, afterwards changed her mind, so that at the time when she received it there may have been no false representation of an existing fact. This is not what Gour cites the case as deciding, but I can find no relevance to the passage in the next case which he cites by way of exception to the same paragraph. That case is *Abdulla v. Emperor*[3] a case in which the only point to be decided was whether an attempt

to cheat had been proved. The accused tried to sell spurious trinkets as gold and offered them to N. as stolen goods, presumably because he was asking less than the trinkets would be worth if they were genuine. N. did not buy. There was no illegal contract, nor was there any question of N. having a civil cause of action. He certainly had not, for he suffered no loss, and there was no contract, legal or illegal, on which he could sue.

In *R. v. Tan Ah Seng*[4] a Court of three Judges held that a prosecution would lie for criminal misappropriation of money entrusted to the accused for a criminal purpose. I see no reason why a man should escape punishment for a crime because he has conspired with a complainant to commit the same or another crime.

I cannot consider it to be a defence for a pickpocket to prove that the watch which he stole had been stolen by the person from whom he stole it.

Mr. Butterfield referred to a note on *R. v. Verteiul and Whelan*[5] in Volume 2 of the Journal of Criminal Law. The accused were convicted of defrauding one Guylee of sums of money by representing that the money was required "to grease the wheels at the police court" or in plain English to be used for bribing.

The appeal is allowed. The order of acquittal is set aside, and the trial of Lim Cheng Soo must continue before the same Magistrate, or if this is not practicable, the trial must commence anew before another Magistrate, if the Crown decides to go on with the case.

I can make no order adverse to the other accused who were not served and who had no opportunity of being heard by me.

*Retrial ordered.*

# F. M. S. REPORTS.

## LAWSON vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Carey, J.) July 1, 1941]

*Evidence Enactment (Cap. 10), sections 34, 114, 133, 157, 159 — Penal Code (Cap. 45), section 165 — Corroboration of accomplice — Entries in books — Principles to be applied by Court of Appeal when considering judgment in which uncorroborated evidence of accomplice has been accepted.*

The appellant, an Inspector of Machinery in the Mines Department, was charged with having, on two separate occasions, received a sum of $40 as an illegal gratification from one Cheah Pak Pang, the manager of a mining Kongsi. The books of the Kongsi contained entries showing that on each of the dates charged a sum of $40 had been paid as "tea money". The prosecution established that on those dates the appellant had in fact inspected the machinery of the Kongsi. The only direct evidence that these sums of $40 had been paid to the appellant was that of Cheah Pak Pang. The books of the Kongsi were not kept by Cheah Pak Pang but by another person.

**Held**, that as the Magistrate had misdirected himself as to certain aspects of the evidence for the prosecution and as to the defence his acceptance of the uncorroborated evidence of Cheah Pak Pang could not be supported and the conviction must be quashed.

*Cases referred to:—*

(1) *R. v. Beebe*, 133 L.T.R. 738; (1925) 19 Cr. App. 22.

(2) *R. v. Clive* (1930) 22 Cr. App. R. 19.

(3) *R. v. Baskerville* (1916) 2 K.B. 658.

(4) *R. v. Howard* (1921) Cr. App. R. 177.

(5) *R. v. Whitehead* (1929) 1 K.B. 99.

(6) *R. v. Lovell* (1923) 129 L.T.R. 638.

(7) *Aung Pe v. King Emperor* I.L.R. (1937) Rang. 110.

(8) *Emperor v. Nur Ahmed* A.I.R. (1934) Cal. 7.

(9) *R. v. Koh Soon Poh* (1935) 4 M.L.J. 120.

(10) *Fuan Ah Pock v. R.* (1940) 9 M.L.J. 250.

(11) *Trowell v. P. P.* (1946) M.L.J. 41.

(12) *Deo Nandan Pershad* v. *R.* (1906) I.L.R. 33 Cal. 649.

(13) *P. P. v. Haji Ismail* (1939) F.M.S.L.R. 141.

(14) *R. v. Tate* (1908) 2 K.B. 650.

(15) *Letchumy v. P. P.* 1 Malayan Cases 129.

(16) *R. v. Mulloy* 20 Cr. App. R. 28.

(17) *R. v. Wilson* (1913) 9 Cr. App. R. 124.

(18) *Abdul Rahman v. P. P.* (1939) F.M.S.L.R. 211.

(19) *R. v. Charavanmuthu* (1930) 22 Cr. App. R. 1.